

**CITY OF SHOREVIEW
MINUTES
REGULAR CITY COUNCIL MEETING
June 7, 2010**

CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Shoreview City Council was called to order by Mayor Martin on June 7, 2010, at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The meeting opened with the Pledge of Allegiance to the flag.

ROLL CALL

The following members were present: Mayor Martin; Councilmembers Huffman, Quigley, Wickstrom and Withhart.

APPROVAL OF AGENDA

Councilmember Wickstrom suggested that item No. 15 be moved ahead of item No. 13 on the agenda, as it will likely not take much time.

MOTION: by Councilmember Huffman, seconded by Councilmember Withhart to approve the June 7, 2010 agenda as revised.

VOTE: Ayes - 5 Nays - 0

PROCLAMATIONS AND RECOGNITIONS

Mayor Martin recognized Zac Quammen, who earned his Eagle Scout badge in Boy Scouts. However, he was not present to receive his plaque.

CITIZEN COMMENTS

There were none.

COUNCIL COMMENTS

Mayor Martin:

On June 16, 2010, the summer concerts in the Commons will begin. For the next 10 Wednesday evenings at 7:00 p.m., there will be outdoor concerts for residents to enjoy. The first concert will be Dan Perry and Ice Cream Band. Councilmember Wickstrom suggested people attending car pool, as the parking lot was jammed last year for this concert.

The Shoreview Community Foundation will kick off the series with free ice cream during the concert. The first grants to be awarded by the Foundation will be announced.

Councilmember Quigley:

The new Fitness Center carpeting has made a noticeable improvement.

Councilmember Wickstrom:

Thank you to all who participated in the Buckthorn Bust Plus. A lot of Buckthorn and Burdock (wild rhubarb) was cleared out.

Councilmember Withhart:

The Shoreview Community Foundation will be announcing two grants to community organizations at the first Wednesday night music concert on June 16, 2010.

CONSENT AGENDA

Two items were pulled for separate discussion.

1. May 10, 2010 City Council Workshop Meeting Minutes

Page 2, 3rd paragraph: Councilmember Wickstrom noted that the word “no” should be deleted in reference to “no other public facilities.”

10. Appreciation and Acceptance of Gift - MOMS Club

Councilmember Wickstrom thanked the MOMS Club for the gift to the City.

Mayor Martin added that the Club had a surplus in their budget, and money was given to the Park and Recreation Department.

MOTION: by Councilmember Huffman, seconded by Councilmember Wickstrom to adopt the consent agenda of June 7, 2010, approving the necessary motions and resolutions:

1. May 10, 2010 City Council Workshop Meeting Minutes, as amended
2. May 17, 2010 City Council Meeting Minutes
3. Receipt of Committee/Commission Minutes
 - Human Rights Commission, April 28, 2010
 - Public Safety Committee, May 20, 2010
 - Environmental Quality Committee, May 24, 2010
4. Verified Claims in the Amount of \$686,552.39

5. Purchases
6. Developer Escrow Reduction
7. Award of Bid - 2010 Street Seal Coat project, CP 10-03
8. Jurisdictional Transfer of Hamline Avenue - County Road I to Lexington Avenue
9. Authorize Purchase of Vehicle Lift for Maintenance Center Project, CP 08-02
10. Appreciation and Acceptance of Gift - MOMS Club
11. Approval of Application for Exempt Permit - Retrieve A Golden of Minnesota, Inc.
12. Accept 2009 Comprehensive Annual Financial Report

VOTE: Ayes - 5 Nays - 0

GENERAL BUSINESS

APPLICATION FOR WILD ANIMAL LICENSE (FALCON) - 657 PINEWOOD DRIVE, LINDA BASCHKY

Presentation by City Planner Kathleen Nordine

Ms. Baschky has applied to keep a red-tailed hawk on her property. Chapter 601 of the City Code permits falcons with a wild animal license. Conditions that need to be met include:

- Applicant must hold a valid falconry license from Federal or State government;
- The raptor shelter must conform to City requirements for accessory structures;
- Compliance with minimum lot area standards for zoning district; and
- Obtain general liability insurance.

Along the rear property line of Ms. Baschky's yard is a 20-foot drainage easement. The property is zoned R-1 and conforms to minimum lot standards. The rear yard, where the shelter will be located, is enclosed with a 6' and 4' fence. The shelter complies with accessory structure setbacks and ordinance requirements. The shelter has been inspected and approved by the DNR.

Ms. Baschky holds a valid Falconry License through the U.S. Forestry and Wildlife Service and Minnesota DNR. She also has General Liability insurance listing the City as an additional interested party.

Property owners within 350 feet were notified of this application. No comments were received. Staff is recommending approval with the conditions listed in the staff report.

Mayor Martin opened discussion to public comment. There were no comments.

MOTION: by Councilmember Withhart, seconded by Councilmember Quigley to approve the Wild Animal License application submitted by Linda Baschky for 657 Pinewood Drive, subject to the following conditions:

- a. The Wild Animal License permits the property owner to keep one red-tailed hawk at 657 Pinewood Drive, subject to continued compliance with applicable State and Federal regulations, and the conditions of this City License;
- b. The Wild Animal License is valid for a period of two years, and may be renewed upon application and administrative review;
- c. The applicant shall maintain a minimum \$200,000 general liability insurance coverage;
- d. The raptor shall be confined on the subject property through the use of the shelter and falconry equipment;
- e. The premises and the raptor shelter must be maintained in clean, sanitary condition, free of odors and regularly cleaned of droppings; and
- f. No breeding shall occur, and no hatchlings ('eyases') less than one month of age shall be kept on the licensed premises.

This approval is based on the following findings:

1. The property conforms to the adopted minimum lot standards for the R-1 District.
2. The shelter is set back more than 30 feet from any lot line, exceeding the setback requirements adopted by the City.
3. The applicant has a cooperative Falconry Permit issued jointly by the Minnesota DNR and the U.S. Fish and Wildlife Service.

Discussion:

Councilmember Withhart noted that the Council has done considerable research to draft an ordinance and has discussed the issue at a number of meetings.

ROLL CALL: Ayes: Huffman, Quigley, Wickstrom, Withhart, Martin
Nays: None

VARIANCE APPEAL - 444 MAPLE LANE, ROBIN RAYGOR

Presentation by City Planner Kathleen Nordine

The applicant is appealing the Planning Commission's decision to deny his request for variances to reduce the 5-foot minimum side yard setback for a driveway to 3 feet, and to reduce the required 5-foot front and side yard setbacks from the property line for parking, including a recreational vehicle (RV).

The Planning Commission reviewed this application in October 2009 and again in May 2010. The application was denied based on no finding of hardship. The City was alerted to the fact that the driveway had been expanded within the setbacks through a complaint. The applicant then applied for a variance to maintain the expanded area for parking. The driveway expansion is asphalt, then class 5 gravel to the property line. The gravel area would be landscaped.

The applicant states hardship is present due to the neighborhood characteristics, which includes nonconforming lots and an accepted neighborhood practice to park RVs and trailers 1 to 3 feet from property lines. The applicant also states that parking his RV will have a negligible visual impact. To park it in the regular driveway makes access to the garage difficult. Further, his lot width was reduced to 97 feet when 3 feet were added to his neighbor's property to correct a property line issue. If his property had retained the three feet as originally platted, a variance would not be needed.

Comments from public notice mostly support the applicant with one or two in opposition. The applicant also solicited signatures from neighbors in support.

The Planning Commission concluded that the applicant has reasonable use of the property with a two-car garage and driveway. The nonconforming lots in the neighborhood do not justify this variance. The request was denied with a 5 to 0 vote. Staff recommends that the Council uphold the Planning Commission decision.

Councilmember Huffman requested the City Attorney comment on the fact that numerous other variances exist in this neighborhood. City Attorney Filla stated that other variances in the neighborhood might indicate whether the character of the neighborhood would change by granting this variance, but that is only one of three criteria that need to be considered to determine whether a hardship is present.

Mr. Raygor, Applicant, distributed photos to illustrate the location of the RV when in compliance and where he would like to park it if the variance is granted. He has parked the RV and previously a boat in the driveway for many years. The neighborhood lots are mostly nonconforming. Most of his neighbors park cars, trucks, boats and RVs up to the lot lines. It is considered most neighborly to put these vehicles next to the lot line so they are less obtrusive. When parking in compliance, he loses half of the access to his garage. When he was informed that the RV had to be parked on asphalt, he had the driveway expanded. However, the contractor added more asphalt than requested, and the City informed him he would have to have the additional 1+ foot removed or obtain a variance.

When the Planning Commission voted on this application in October 2009, the vote was 3 to 3. The recent vote against his application is misleading because only five members were present. With only five present, a super majority of four votes was needed. If he had retained his three votes without a super majority, he would have been granted the variance on a 3 to 2 vote. It is a hardship that the adjacent neighbor was given 3 feet from his property because otherwise he

would not need this variance. His neighbor is not concerned about his application. When the City widened the street and put in surmountable curb, the front setback from the street became significantly less, which now impacts where his RV is parked.

The complaint resulted when the adjacent house was to be sold and a realtor mentioned the house might sell faster if the RV were not parked next door. Had he been informed of this issue, he would have been glad to park it elsewhere when the house was being shown. The RV is not on the property 8 months out of the year when they are traveling.

In looking into parking the RV off-site, the nearest place he could find that would accommodate the size vehicle he owns is in Otter Lake, but there is no security and no electricity. The only other place to park it would be in an RV park, which would be close to \$1,000 a month, which he cannot afford.

Expansion of the driveway on the other side would mean an 8-foot extension and removal of a lot of mature vegetation and trees. It would block one entrance to his house and would exceed the impervious surface limit. It would put the RV in the middle of his front yard, which would alter the character of the neighborhood.

Seven of the eight properties surrounding his have permanent structures within the setbacks. The person who made the complaint has a 20 x 30 foot driveway extension to the lot line. Vehicles are often parked on the lot line without variances. The City has not acted to correct any of those situations. The precedent has been set for flexible setbacks. He is the only one being forced to obey the letter of the Code.

Mayor Martin asked if the applicant lived on his property when the three feet was given to the adjacent property. **Mr. Raygor** answered no. He has lived on his property 34 years and the transfer occurred prior to that time.

Councilmember Quigley noted that the contractor who widened the driveway did not pull a permit and then added more driveway than was contracted. Mr. Raygor stated that the contractor has a small business and gave him a good price. He does not need the driveway to be any larger than what he contracted for. It was the contractor's decision to add the 1+ foot, not his intention.

Planning Commissioner Mons clarified that the vote was unanimous by all five commissioners. It was treated as a new matter, not a continuation of a former matter.

One of the criteria for a variance is that the situation is not created by the applicant. The Planning Commission felt clearly that this is of the applicant's own making. If relaxation of the ordinance is permitted due to difficulty in finding storage, then code requirements are not needed.

Mr. Steve Gallup, 435 Walnut Lane, stated that his back yard meets Mr. Raygor's back yard. He has counted at least six driveways on lot lines that have always been there. Campers are

parked on lot lines and on grass. Most of the lots are smaller than a normal City lot and normal use should allow variances to be granted. There is an approved variance for a nonconforming narrow lot with two full driveways, but Mr. Raygor is being denied two feet. It does not make sense to deny two feet. Mr. Raygor's driveway looks better than most in the neighborhood. He urged the Council to overturn the Planning Commission's decision.

Mr. Mike Wielenberg, 416 Maple Lane, stated that he agrees with Mr. Gallup and the applicant and supports the application. Where Mr. Raygor proposes to park the RV would not cause any difficulty to his neighbors and he urged the Council to grant him the variance.

Councilmember Withhart agreed that this neighborhood is unique. However, the Planning Commission did properly interpret the ordinance in that the added width is for the applicant's created need. The lot is a conforming lot and hardship is created by the applicant's need to park an RV.

Councilmember Huffman stated that he believes the variance request meets two of the three criteria, but he is not sure hardship is met. It is an issue that the neighborhood in general is not in compliance with the standards being applied to Mr. Raygor.

Mayor Martin stated that she believes there is reasonable use of the property with a double garage and driveway. Often when variances are requested, it is to build a two-car garage, which has become reasonable use in today's living. She is not sure reasonable use is to park a 35-foot RV. The RV could be parked legally, even though it would be inconvenient.

Councilmember Wickstrom stated that there have been complaints in other parts of the City regarding parking of RVs. It is a unique neighborhood, but she also agrees there is not hardship. She does not want to set a precedent. A future neighbor may not be as willing to allow this. There should be consequences to the contractor who created this situation.

Councilmember Quigley agreed that there is not enough to find hardship, even though it is a difficult situation for the applicant.

Ms. Nordine summarized some regulations used by other cities: 1) Arden Hills has ordinances based on the size RV and where it can be parked on the property; 2) Burnsville restricts RVs parking on paved driveways and in places hidden from view and also prohibits vehicles longer than 40 feet; 3) Woodbury allows RVs up to 24 feet in length on any rear or side lot line within 5 feet provided in a driveway, or front yard within 15 feet of the curb; and 4) White Bear Lake allows on paved driveway adjacent to the garage.

Councilmember Withhart stated that Shoreview has not defined parking of different sizes of RVs. The applicant can park the RV in his driveway. Size is not the issue.

MOTION: by Councilmember Quigley, seconded by Councilmember Withhart to uphold the Planning Commission's decision denying the variance request submitted by

Robin Raygor, 444 Maple Lane, reducing the required 5-foot side yard setback for a driveway to 3 feet and permit the parking of a vehicle 3 feet from the side property line and within the required 5-foot setback from a front property line based on the finding hardship is not present. The applicant has reasonable use of the property with the existing single-family home, garage and driveway. There are no unique characteristics of the property and the variance is created by the applicant's storage needs. The granting of the variance does not uphold the spirit and intent of the ordinance.

Discussion:

Councilmember Wickstrom stated that legally this seems the right thing to do, but her concern is that there are widespread violations in the neighborhood which need to be addressed. It is not fair that Mr. Raygor has applied through the City and is forced to be in compliance when so many others in the neighborhood are not.

Mayor Martin stated that the other side is whether to institutionalize things that are not tolerated by City Code. These decisions are usually a response to a complaint. The City does not have crackdowns on neighborhoods for compliance. The SHINE program is proactive, but this neighborhood has not been included in that program.

Councilmember Quigley stated that expensive lake properties are fragile areas and would decline if there were not good planning discipline.

Councilmember Huffman suggested this be a lead-in to further discussions and review of overlays in zoning to recognize unique circumstances in different neighborhoods, especially lake neighborhoods.

ROLL CALL: Ayes: Quigley, Wickstrom, Withhart, Huffman, Martin
 Nays: None

MINOR SUBDIVISION--221 OWASSO BOULEVARD, GREATER METROPOLITAN HOUSING CORPORATION

Councilmember Huffman prefaced consideration of this matter with the following statement:

I support strongly what the Greater Metropolitan Housing Corporation (GMHC) is doing in the work of maintaining and creating affordable housing. They are certainly one, if not the leading agency, in the Twin Cities. GMHC has been a partner in rolling out the Shoreview Home Energy Improvement Loan Program. Outside of my role as a City Councilmember, I also partner with GMHC, a non-profit that I help lead has teamed up with GMHC and is in the process of purchasing two homes in neighborhoods outside of Shoreview. Specific to the Owasso property, the group I am associated with is helping develop the land. We will not own the land. GMHC will own it until each house is sold to a buyer. We will not build the house.

There will be a general contractor. What my group will bring to this development is volunteer labor as necessary to keep the price of the house as low as possible and keep the house affordable to the work population. Work force housing is up to \$200,000 in value. For a family of four, income is up to approximately \$60,000. With this statement, my involvement with GMHC and the development of this property, I will excuse myself from the vote.

City Attorney Filla added that the law is such that Councilmember Huffman does not have a legal conflict of interest. He could participate in this decision if he chose to do so. However, for the sake of appearance, he believes Councilmember Huffman has chosen the correct action in this case.

Presentation by City Planner Kathleen Nordine

The subject property is currently 13,000 square feet, developed with a duplex and double garage. The property is vacant. The structure is in poor condition and substandard to code. The property was in foreclosure when GMHC purchased it through the First Look program. The proposal is to demolish the existing structures and divide the property into two lots for single-family residences. Each parcel would be developed with a split-level home with attached garage oriented toward the alley. The homes would be marketed as work force housing.

GMHC has applied for a minor subdivision to divide the property into two parcels. The Planning Commission reviewed this application at its May meeting and approved the subdivision with variances from R-1 lot standards for lot area and width. Lot area would be approximately 6,500 square feet with a width of 50 feet. These dimensions are in keeping with how this area was platted. The Planning Commission concluded that the proposal is consistent with the development pattern in the neighborhood, Comprehensive Plan and zoning.

Notices were mailed to property owners within 350 feet. No comments were received. The Lake Johanna Fire Department reviewed the plan and has no concerns. Staff is recommending approval with the conditions listed in the staff report. It is noted that condition No. 8 was revised per the Planning Commission discussion and condition No. 11 was added.

Councilmember Withhart asked how the existence of the nonconforming duplex building creates hardship. Ms. Nordine explained that the proposed development would create two residences in compliance with the zoning of the property. City Attorney Filla stated that only the subdivision is being considered. The Planning Commission established hardship with approval of the variances.

Planning Commission Chair Proud stated that the issue of hardship is that this duplex served two families. It would be appropriate going forward for two families to be served. This was not a unanimous decision. The Commissioner who dissented believed reasonable use is available with one unit on the property. The majority of the Commission supports sustaining two dwellings and supports work force housing.

City Attorney Filla stated that the reasonable use standard has been reviewed by the Minnesota Supreme Court, and has been interpreted to mean whether the applicant is asking for a reasonable use of property, not just whether there is already reasonable use. Two homes replacing a two-unit property is reasonable. The zoning would remain R-1.

Councilmember Wickstrom stated that she strongly agrees with the goal of creating affordable housing. However, in light of the previous application just considered, it seems hypocritical to create nonconforming lots of 50 feet in width. She suggested a side-by-side duplex where the two units would have a common wall on the property line. Ms. Olson stated that two owners with an attached common wall would create a situation of constant disagreement. Ms. Nordine added that the property is zoned R-1, and duplexes are not permitted in that district.

Mayor Martin stated that she was concerned about creating two substandard lots, but adjacent properties are of similar size. She noted that the Planning Commission spent considerable time discussing the driveway, impervious surface and easement on the alleyway. The alley is public but not scheduled to be improved for a number of years. She asked if the two houses would be identical.

Ms. Carolyn Olson, Greater Metropolitan Housing Corporation, responded that the footprints are similar, but the exterior will look different. Although the homes will initially be sold as affordable, resale is not restricted to remaining affordable housing. However, initial buyers would have to pay back the full \$200,000 upon resale. It will take a number of years for them to be able to make any money on resale.

City Attorney Filla referred the Council to the survey. The easement is shared between Parcel A and the property to the west. A legal description is needed to be sure of the right to decrease the size of the shared driveway so the applicant can meet the 40% impervious surface requirement. Verification should be prior to issuance of building permits. Ms. Nordine stated that prior to City release of the deeds for recording with the County, staff will require the legal description and verification of the easement. This will be done prior to City approval on the deeds of conveyance and issuance of a building permit.

MOTION: by Councilmember Quigley, seconded by Councilmember Withhart to approve the Minor Subdivision application submitted by Greater Metropolitan Housing Corporation for the property located at 221 North Owasso Boulevard, and to authorize execution of the Development Agreement, subject to the following conditions, with the last sentence of condition No. 8 reading, "This condition is subject to verification of an existing easement prior to the City's stamp of approval for the deeds of conveyance."

1. The minor subdivision shall be in accordance with the plans submitted.

2. Public drainage and utility easements shall be dedicated to the City as required by the Public Works Director. The applicant shall be responsible for providing legal descriptions for all required easements. Easements shall be conveyed before the City will endorse deeds for recording.
3. A minimum setback of 30 feet is required for the proposed dwellings on Parcels A and B from the front property line adjacent to North Owasso Boulevard.
4. Municipal water and sanitary sewer service shall be provided to both resulting lots.
5. The applicants shall enter into a Development Agreement with the City. This agreement shall be executed prior to the City's release of the deeds for recording.
6. Driveways and all other work within the North Owasso Boulevard right-of-way or alleyway are subject to the permitting authority of Shoreview's Public Works Department.
7. The maximum impervious surface coverage permitted for Parcels A and B is 40%.
8. The existing driveway on Parcel A shall be modified to comply with the 40% maximum impervious surface coverage permitted. The applicant shall execute an ingress/egress easement and maintenance agreement with the property owner at 225 North Owasso Boulevard for that portion of the shared driveway remaining on Parcel A. This condition is subject to verification of an existing easement prior to the City's stamp of approval for the deeds of conveyance.
9. Tree removal requires replacement trees per City Code. City requirements for the tree removal and protection plan shall be detailed in the Development Agreement.
10. This approval shall expire after one year if the subdivision has not been recorded with Ramsey County.
11. A privacy fence or landscape screen shall be provided along the eastern property line to screen the proposed development from the property immediately to the east.

The approval is based on the following findings:

1. With the approval of the lot area and width variances for Parcel A and B, the proposed lots conform to the adopted City standards for new lots.
2. The proposed subdivision complies with the City's subdivision standards.
3. The proposed land use is consistent with the planned land use identified in the Comprehensive Plan and with the Development Code.

Discussion:

Councilmember Wickstrom stated that it is helpful to understand that the adjacent property is the same width and that the houses will be narrower without further deviation to Code standards.

ROLL CALL: Ayes: Wickstrom, Withhart, Quigley, Martin
 Nays: None

WEED ABATEMENTS

**--333 Long Lake Court
--5540 Knoll Drive
--306 County Road J**

Mayor Martin noted the amended motion for weed abatement for three properties.

Ms. Nordine requested the Council to hold a hearing to approve abatement of vegetative growth removal in accordance with the City's Municipal Code, Section 211.060. Costs for abatement are charged to the property owner. If not paid, costs are certified to the property taxes. Notification was sent to property owners by mail and by posting on the property and informed them of this hearing. Staff recommends the public hearing and approval of abatement for the three listed properties.

Mayor Martin opened the public hearing.

No one appeared for 333 Long Lake Court.

The property owner of 5540 Knoll Drive stated that he bought the property in foreclosure. Every time he has driven by the grass has been cut. In attempting to find someone in response to the City's notice, the earliest he could schedule the work is tomorrow, June 8, 2010.

Mr. Schwerm suggested moving forward with the recommended action. The City will not get the work done by tomorrow. If the grass has been mowed, the City will not need to mow it and bill the property owner. Approval of the resolution, however, will authorize the City to do the work if it has not been done and insure maintenance through the year.

Ms. Jean Walstad, 306 County Road J, asked what area of her property is to be cleared, what weeds are noxious on the property, and if this notice has anything to do with the rezoning of the property to residential. She said they are working to get as much cut down as possible. The property is three acres. Ms. Nordine responded that the rear yard along the driveway has grass that exceeds 9 inches in height. This growth is the nuisance, not noxious weeds. She is unaware of any zoning issue with this property. Mr. Schwerm suggested the same procedure to move forward with the resolution and that staff will meet with Ms. Walstad on her property to better identify the areas that need to be mowed.

Councilmember Quigley asked for a definition of the yard. Mr. Schwerm stated that will be taken into account when staff meets with Ms. Walstad.

MOTION: by Councilmember Huffman, seconded by Councilmember Withhart to adopt Resolution No. 10-46, pursuant to Section 210.020(A), approving the abatement of vegetative growth for the properties located at:

333 Long Lake Court
5540 Knoll Drive
306 County Road J

and to charge the property owner for the cost of the abatement, including administrative costs. The City Manager is authorized to monitor the property throughout the 2010 and 2011 growing seasons and to abate any vegetative growth on the property that does not comply with City regulations.

ROLL CALL: Ayes: Withhart, Huffman, Quigley, Wickstrom, Martin
Nays: None

Councilmember Withhart requested a map of the City for future weed abatement hearings to show site locations as part of the report to the Council. Councilmember Wickstrom added that one map with all locations would be sufficient.

SPECIAL ORDER OF BUSINESS

It was consensus of the Council to cancel the July 6, 2010 regular Council meeting due to the July 4 holiday.

ADJOURNMENT

MOTION: by Councilmember Huffman, seconded by Councilmember Withhart to adjourn the meeting at 9:04 p.m. on June 7, 2010.

ROLL CALL: Ayes - 5 Nays - 0

Mayor Martin declared the meeting adjourned.

THESE MINUTES APPROVED BY COUNCIL ON THE 21st DAY OF JUNE 2010.

Terry C. Schwerm
City Manager